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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of Allocation of)
Spectrum Below 5 GHz Transferred) ET Docket No. 94-32
from Federal Government Use)

In the Matter of Amendment of)
Section 2.106 of the Commission's)
Rules to Allocate Spectrum at 2) ET Docket No. 95-18
GHz for Use by the Mobile-)
Satellite Service)

In the Matter of Preparation for)
International Telecommunication) IC Docket No. 94-31 ✓
Union World Radiocommunication)
Conference)

**PETITION FOR CONSOLIDATION OF INTERRELATED
PROCEEDINGS AND OTHER PROCEDURAL RELIEF**

The undersigned organizations urge the Commission to take strong and prompt action to avert the crippling of the American public's ability to receive breaking news, sports and other local coverage as an integral part of its free, local and universal television service. This coverage -- relied upon by 98% of all Americans -- is made possible by seven channels of electronic news-gathering services (ENG) in the 2 GHz band. The Commission should take the following two procedural steps to preserve this service and permit it to transition to digital.

(1) The Commission should defer action on ET Docket No. 95-18 which calls for reallocating 35 MHz (two channels) of the public's electronic news-gathering spectrum to mobile satellite services (MSS) until after (a) WRC-95 proceedings

have been concluded in November (IC Docket No. 94-31) and (b) reliable findings have been made as to MSS's real spectrum needs.

(2) The FCC should reach an understanding with Congressional leaders about the obligations concerning the 200 MHz of spectrum to be freed up by NTIA pursuant to the Omnibus Budget Reconciliation Act of 1993. See ET Docket No. 94-32. This understanding would accommodate the FCC's postponing beyond the currently operative August 8 target date a decision on the allocation of 25 MHz of this freed-up spectrum in the 4 GHz band, since this is probably the only spectrum suitable for converting the public's ENG services to digital advanced television. Alternatively, the Commission could act on that 25 MHz allocation but announce that it will not implement its decision until it has completed a thorough-going survey of ENG, MSS and other competing spectrum needs.

In these proceedings, the Commission is considering proposals that could gut the public's news, sports and other local coverage. The issues are complex, the technical points highly controversial and the interrelated ramifications of the proceedings under-appreciated. The fragmentation of these issues across three proceedings, one with an imminent deadline, virtually assures an outcome that will not be based on the application of the Commission's expertise to a fully developed, properly coordinated and comprehensive record.

Consider these points:

- A major underpinning of these proceedings was that mobile satellite services would relocate two channels of broadcast ENG incumbents to the 2110-2145 MHz band and also pay to relocate the incumbents in that band, thus not disturbing the amount of spectrum now available to broadcasters in the 2 GHz band. But the MSS proponents now resist this proposal because of the price tag which they estimate to be \$3 billion.
- Moreover, there is no guarantee that in the October/November WRC-95 conference, MSS will be granted the 1990-2025 MHz band globally. Indeed, the WARC-92 allocation for MSS stopped at 2010 MHz.
- Also, there is absolutely no showing that mobile satellite services will need 35 MHz of spectrum. Various companies may express interest in this service which overlaps very substantially with other wireless telephone services where provision has already been made for up to nine competitors. But only a few MSS proponents are likely to put up the billions of dollars necessary to launch this service.^{1/}
- Thus, if it turns out, for example, that only three MSS service providers will actually operate, and they need only 5 MHz each (which probably isn't likely for at

^{1/} This does not include auction payments, which mobile satellite operators oppose because of the burden of possible auctions in every country in the world.

least a decade), then the FCC will have unnecessarily and wastefully allocated 20 MHz spectrum for MSS and created huge disruptions in other services, like the public's local news-gathering.

- The MSS service includes uplinks and downlinks. We understand that one major MSS proponent believes it must relocate incumbents in the 2160-2200 MHz downlink band. Since these incumbent users have paired operations in the 2110-2150 MHz band, they, too, will have to be vacated, leaving spectrum in this band available for other users. A comprehensive review of how the 2 GHz frequencies should be allocated to accommodate ENG, MSS and others should also take this consideration into account.
- These proceedings need, but have thus far failed, to take into account the facts that (i) broadcast ENG needs grow 15% annually, (ii) the ENG frequencies at 2 GHz are already unduly congested,^{2/} and (iii) broadcasters are on the verge of having to double the number of stations they operate -- NTSC and digital -- until the give-back of the NTSC channels is accomplished, currently pegged by the Commission to occur in 15 years.
- While the operation of twice as many television stations won't double ENG needs, it will dramatically increase them. And the fact that HDTV will multiply by

^{2/} These seven channels are intensively shared with broadcast networks, cable networks, cable systems and other programmers.

five the amount of information that must be transmitted in each ENG channel will offset the efficiency gains that digitization of ENG transmissions might achieve. The 25 MHz of 4 GHz spectrum made available under the Omnibus Budget Reconciliation Act of 1993, although only a piece of the solution, is the only suitable spectrum for accommodating the ENG transition to digital.

It is hard to imagine a set of issues more suitable for an expert administrative agency to resolve. But the unreasonable fragmentation and timing of the proceedings must be addressed before the FCC's expertise can be brought properly to bear on the issues. The procedural steps recommended here will put these matters on solid footing. Right now, however, the Commission simply does not have the information necessary to engage in reasoned rulemaking in any of these proceedings. This fatal flaw threatens to lead to decisions that could seriously injure the public's news, sports and

other local coverage not only in the new digital world but in current broadcast service as well.^{3/}

Respectfully submitted,

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^{3/} The colloquy between Senators Hollings and Stevens on June 14, 1995, evidences a strong concern about protecting "the ability of local broadcasters to continue to deliver on-the-spot news and information" and the need of the government to undertake a comprehensive review of this issue. Cong. Rec. at 8373. Accordingly, there is reason to believe that Congressional leaders would support the Commission's undertaking the comprehensive overview of the various proceedings and developments affecting the public's ENG services that is urged in this pleading.

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